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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,552

02/05/2004

Andrew Valdez

5519

7590

05/05/2006

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/772,552	Applicant(s) VALDEZ, ANDREW	
	Examiner Chapman E. Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-8 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"The add on section" recited in claims 5 and 8 lacks a positive antecedent. This add on section is recited in claims 2 and 3. claim 5 depends on claim 4 which depends on claim 1. Claim 8 is an independent claim but the add-on section is recited for the first time in the last paragraph of the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagasse (3851868) in view of Austgen (3420193) and Chen (6296038). Lagasse discloses a hinged door frame spreader 10 for maintaining a pair of pair of door frame sides 64/66 spaced apart a desired distance during installation of a door frame structure. The door frame spreader comprises:

- A first flat board 14
- A second board 16

- The inner edges of the boards are adjustably connected
- The first board comprises smooth inner edge and the second board comprises a short board having a mating smooth inner edge
- The two boards interconnecting along the smooth edges
- A frame spreader board for horizontal placement at a bottom of a door frame to space to vertical side of the door frame the same distance apart as a horizontal top of a door frame during installation of a door frame in a structure
- Each of the outer edges of the two boards comprises an end face having a recessed center opening, between elements 52 receiving a door stop 68/70 therein
- The first board 14 is equal in length to a distance between a pair of inner faces of a pair of door stops on a pair of sides of a frame
- The second board is, at least, equal in length to a double thickness of a door stop so that the door frame spreader
- Each board having an outer edge 26/28 shape to conform to an inside profile of a side of a vertical door frame member aligned for installation to a wall structure
- The door frame spreader having a preset length to provide a desired spreader distance between a pair of sides of a door frame equal to a length of the hinged door frame spreader

- Maintaining a pair of sides of a bottom of a door frame spaced apart by the length of the spreader board while installing a door frame in a wall structure to create an installed frame which matches a door to be installed

The two boards are not hinged together as taught by Chen. Austgen shows a frame spreader with at least one elevating member 36/39 on each board adapted for accommodating the thickness of the hinge, with portions hingedly connected. With the teaching of Austgen and Chen, the door frame spreader of Lagasse will now will be pivotable into an angled configuration to position the spreader board between the vertical sides of a door frame and the spreader further being pivotable into a straight linear configuration to contact a bottom of each pair of vertical sides of the door frame. The inner edges would be interconnected along the smooth edges by a hinged connection

Claims 2-4 are objected to as depending upon a rejected claim but would be considered allowable if amended to include the base claim and any intervening claims.

Claims 5 are objected to as depending upon a rejected claim but would be considered allowable if amended to correct the 35 USC 112 problems and to include the base claim and any intervening claims.

Claim 8 would be allowable if amended to correct the 35 USC 112 problem as described above

Claim 7 is allowable over the prior art of record

Applicant's arguments are moot in view of the new ground of rejection

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JEANETTE CHAPMAN
PRIMARY PATENT EXAMINER
ART UNIT 3635

jec